UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AARON HERNANDEZ, Plaintiff V. SECURUS TECHNOLOGIES, INC., Defendant	CA No.: 1:16-cv-12402-RGS

AMENDED COMPLAINT AND JURY DEMAND

I. Parties

1. Plaintiff Aaron Hernandez ("Plaintiff") is a resident of Massachusetts, and an inmate of the Massachusetts Department of Corrections Facility in Shirley, Massachusetts.

2. Securus Technologies, Inc. ("Defendant") is a for-profit telecommunications corporation organized under the laws of the State of Texas, located at 14651 Dallas Parkway, Suite 600, Dallas, Texas 75254. Defendant provides phone and video visitation services to incarcerated persons nationwide and within Massachusetts through its so-called Secure Call Platform service. Defendant's Registered Agent in the Commonwealth of Massachusetts is National Registered Agents, Inc. located at 155 Federal St., Suite 700 2nd Floor, in Boston Massachusetts.

II. Jurisdiction

3. On November 25, 2016 this case was properly removed to the United States District Court of the District of Massachusetts pursuant to 28 U.S.C. §§1331, 1441, 1446 and 42 U.S.C. §1983.

III. Venue

4. Venue is proper in the United States District Court for the District of Massachusetts pursuant to 28 U.S.C. 1391(b)(2) & 1446 because a substantial portion of the events giving rise to this claim occurred at the Suffolk County House of Corrections in Suffolk County, Massachusetts.

IV. Facts

Services Offered by Securus Technologies, Inc.

5. The Massachusetts Department of Corrections regulates the access to telephones and the monitoring of telephone calls for incarcerated persons and pre-trial detainees. See 103 CMR 482.

6. Defendant has a contract to provide the phone system for the Suffolk County House of Corrections in accordance with the regulations established by the Department of Corrections. Defendant records phone calls to and from inmates at the Suffolk County House of Corrections, and Defendant stores these recordings in an electronic database.

7. Defendant charges inmates a fee to use its so-called Secure Call Platform and an additional per minute rate on all phone calls.

8. Defendant's "Customer Integrity Pledge" promises "to be open and honest" in its dealings with inmates and their callers and to provide the following: (1) "the most technologically advanced audio and video communications platform to allow calls with a high level of security"; (2) "confidentiality" and adherence to "all Federal, State, and Local laws"; and (3) "[provision of and investment in] security features that will make all parties and the public safe…." **Exhibit A** ("Customer Integrity Pledge") nos. 1, 6, 9 & 10.

9. Upon information and belief, and as has been widely reported in the media, the security of Defendant's electronic database was repeatedly compromised between 2011 and 2014. **Exhibit B** (Jordan Smith, Micha Lee, *Massive Hack of 70 Million Prisoners Indicates Violations of Attorney Client Privilege*, Intercept (November 11, 2015)). Anonymous computer hackers repeatedly gained access to Defendant's database and leaked records of over 70 million phone calls to and from incarcerated persons nationwide. See **Exhibit B** p. 2.

10. Upon information and belief, and as has been widely reported in the media, the leaked records contained over 14,000 recorded conversations between inmates and attorneys. See **Exhibit B** p. 2.

11. Defendant's practice of recording phone calls between inmates and their attorneys, and then providing law enforcement with access to such phone calls has also been the subject of at least one class action lawsuit in federal court. Austin Lawyers Guild v. Securus Technologies, Inc., Case No. 1:14-cv-00366-LY (W.D.Tex 2016). This action survived Defendants' Motion to Dismiss before being settled in March of 2016.

Hernandez Security Breach

12. Plaintiff has been incarcerated within the Commonwealth of Massachusetts since June 26, 2013. During the summer of 2014, Plaintiff resided at the Suffolk County House of Corrections while awaiting trial in Bristol County. Plaintiff routinely used Defendant's phone platform to speak to friends, family, and his attorneys during his incarceration in Suffolk County House of Corrections.

13. Upon information and belief, and as has been widely reported in the media, during the summer of 2014 Defendant's electronic database was breached, and an unauthorized party obtained improper access to Plaintiff's phone recordings. **Exhibit C** (Bob McGovern, *Aaron*

Hernandez Jailhouse Phone Calls Tapped During First Murder Trial, Authorities Say, Boston Herald (October 28, 2016)). The identity of this unauthorized party has not been disclosed. **Exhibit C**.

14. Upon information and belief, the records of Plaintiff's phone calls were the only records accessed during the 2014 breach of Defendant's Massachusetts electronic database. **Exhibit C**.

15. Upon information and belief, Defendant notified the Suffolk County Sheriff's Department that the security of its electronic database had been breached and that Plaintiff's phone calls were accessed during the breach. **Exhibit C**. Neither Defendant nor the Suffolk County Sheriff's Department notified Plaintiff or Plaintiff's counsel that Plaintiff's phone recordings had been improperly accessed.

16. To date, the extent of the security breach, the files and recordings that were accessed during the security breach, and the identity of the party(ies) responsible for the breach have not been provided to Plaintiff or his counsel.

17. Upon information and belief, and based on the habitual violation of attorney-client privilege revealed in previous breaches of Defendant's electronic database, the recorded phone calls accessed during the breach potentially included privileged and confidential conversations between Plaintiff and his attorneys.

Count I-Negligence

18. Plaintiff repeats and realleges the above paragraphs as though fully set forth herein.

19. Defendant owed Plaintiff a duty to protect the records with which Plaintiff entrusted Defendant, including and especially the privileged and confidential recordings of conversations between Plaintiff and his attorneys.

20. Defendant acknowledges this duty in its Customer Integrity Pledge. See **Exhibit A**.

21. In breach of this duty, Defendant stored Plaintiff's records on an electronic data base that could be, and was, accessed by unauthorized party(ies).

22. Defendant had knowledge of the vulnerabilities of its electronic database at least as early as 2011, when breaches of the electronic database were first detected. See **Exhibit B**. Defendants' 2014 storage of Plaintiffs records in an unsecure database constitutes negligence.

23. Plaintiff was damaged as a direct result of Defendant's negligent conduct. Because the full extent of the security breach is as yet unknown, the amount of Defendant's damages must be determined at trial.

Count II-Misrepresentation

24. Plaintiff repeats and realleges the above paragraphs as though fully set forth herein.

25. Defendant makes the following representations to the inmates eligible for its services: (1) "the most technologically advanced audio and video communications platform to allow calls with a high level of security"; (2) "confidentiality" and adherence to "all Federal, State, and Local laws"; and (3) "[provision of and investment in] security features that will make all parties and the public safe…." **Exhibit A** nos. 6, 9 & 10.

26. Defendant made these representations in order to induce inmates to use its services.

27. Defendant had knowledge of the vulnerabilities of its electronic database at least as early as 2011, when breaches of the electronic database were first detected. See **Exhibit B**.

28. Defendant's knowledge of the electronic databases' vulnerabilities demonstrates that Defendant's representations of confidentiality and security were reckless or even false.

29. Plaintiff was induced by Defendant's representations of confidentiality and security to rely on Defendant's service to communicate with friends, family, and his attorneys.

30. Plaintiff was damaged as a result of the lack of confidentiality and security in Defendant's electronic database. Because the full extent of the security breach is as yet unknown, the amount of Defendant's damages must be determined at trial.

Count III-Breach of Contract

31. Plaintiff repeats and realleges the above paragraphs as though fully set forth herein.

32. Plaintiff contracted with Defendant to use Defendant's Secure Call Platform to communicate with friends, family, and his attorneys via a secure and confidential service.

33. As consideration for this service, Plaintiff paid Defendant a flat fee as well as a per-minute rate on all calls.

34. Defendant breached its contract with Plaintiff when Defendant stored Plaintiff's records on an electronic database that could be accessed by unauthorized parties.

35. Plaintiff was damaged as a direct result of Defendant's failure to store Plaintiff's records on a secure and confidential electronic database. Because the full extent of the security breach is as yet unknown, the amount of Defendant's damages must be determined at trial.

Count IV-Breach of Contract (Third Party Beneficiary)

36. Plaintiff repeats and realleges the above paragraphs as though fully set forth herein.

37. Defendant has a contract with Suffolk County to provide the phone system for the Suffolk County House of Corrections in a manner consistent with the regulations set forth by the Massachusetts Department of Corrections.

38. Under the Massachusetts Department of Corrections regulations, only a member of the Department of Corrections can download a recording of an inmate's phone conversation. 103

CMR 482.11. The regulations on phone use and monitoring are designed, in part, to protect the security and confidentiality of inmates' communications.

39. As an inmate in the Suffolk County House of Corrections, Plaintiff was a third party beneficiary of this contract between Defendant and Suffolk County.

40. Defendant breached its contract with Suffolk County by failing to provide a phone services platform that adhered to the regulations set forth by the Massachusetts Department of Corrections. The deficiency of Defendant's system is evidenced from the security breach in which Plaintiff's information was accessed by and unauthorized user.

41. Plaintiff was damaged as a direct result of Defendant's breach of its contract with Suffolk County. Because the full extent of the security breach is as yet unknown, the amount of Defendant's damages must be determined at trial.

Count V- 42 U.S. § 1983 (Civil Rights Act)

42. Plaintiff repeats and realleges the above paragraphs as though fully set forth herein.

43. The Sixth Amendment of the United States Constitution entitles a criminal defendant to effective assistance of counsel, which includes confidential and timely attorney-client communication.

44. Similarly the First, Fifth, and Fourteenth Amendments protect an individual's right to access the courts, which is violated when the confidentiality of attorney client communications are breached.

45. When Plaintiff used Defendant's phone service to communicate with his attorneys while he was incarcerated, Plaintiff was exercising rights secured by the United States Constitution.

46. Defendant interfered with the exercise of Plaintiff's rights to the extent Defendant recorded privileged and confidential communications between Plaintiff and his attorneys and stored such recordings on an unsecure electronic database.

47. Any such interference would have occurred under color of law as a result of Defendant's contract with Suffolk County to provide phone systems for the Suffolk County House of Corrections in a manner consistent with the regulations set forth by the Massachusetts Department of Corrections.

Count VI – Mass. Gen. Laws ch. 214 1b (Invasion of Privacy)

48. Plaintiff repeats and realleges the above paragraphs as though fully set forth herein.

49. Defendant engaged in the gathering of private information by recording phone conversations between Plaintiff and his friends, family members, and attorneys while Plaintiff was incarcerated in the Suffolk County House of Corrections.

50. Plaintiff's private information was disseminated when Defendant stored Plaintiff's private information on an unsecure electronic database that was subsequently breached by an undisclosed party.

51. The substance of Plaintiffs conversations with friends, family members and attorneys is of a highly personal and intimate nature. Dissemination of such information to unauthorized parties constitutes and unreasonable invasion of privacy.

52. Plaintiff experienced damage as a direct result of Defendant's invasion of privacy. The full extent of the security breach is as yet unknown, and the extent of Defendant's damages must be determined at trial.

Count VII – Prayer for Temporary Restraining Order and Preliminary Injunctive Relief

53. Plaintiff repeats and realleges the above paragraphs as though fully set forth herein.

54. Upon information and belief, Defendant has access to or has in its custody information pertaining to the nature and extent of Defendant's provision of services to the Plaintiff during the period of Plaintiff's incarceration from June 26, 2013 to the present, including information related to the 2014 security breach during which Plaintiff's information (i.e. recorded phone calls) were accessed by an unauthorized party.

55. Such information is thought to include, but is not limited to, how Defendant's electronic database was breached, what information of Plaintiff's was accessed during the breach, the identity of the party who accessed Plaintiff's information, additional parties to whom Plaintiff's information was provided, all communications and/or records with the Suffolk County Sheriff's Department and/or other party(ies) regarding the security breach whether such information is in an electronic form or otherwise, and any and all investigations and/or findings made by Defendant, made on Defendant's behalf, or made by third parties concerning the security breach.

56. Such information would reveal the full extent of the damages Plaintiff experienced as a result of the 2014 security breach of Defendant's electronic database as well as any other injuries unknown to Plaintiff during the period of Plaintiff's incarceration from June 26, 2013 to the present.

57. Plaintiff hereby requests that this Court order Defendant to take all necessary steps to preserve and retain any and all such materials within Defendant's possession, custody, or control. For the convenience of the Court, a proposed preliminary injunctive order is attached to the Motion for Preliminary Injunctive Relief filed simultaneously with this Amended Complaint.

58. Without such an order, Plaintiff will be unable to determine the full extent of his damages beyond what has been previously reported in the news media, and Plaintiff would have no other adequate remedy at law.

WHEREFORE, Plaintiff Aaron Hernandez demands judgment against Defendant Securus Technologies, Inc. on all counts and prays that this Court award damages of an amount to be established at trial, and award any equitable relief this Court may deem just and proper including costs, attorney's fees, and any further relief that this Court finds appropriate.

PLAINTIFF HEREBY CLAIMS HIS RIGHT TO TRIAL BY JURY ON ALL ISSUES SO TRIABLE

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